hibition been in the Senate bill since June, but its parameters were explained in a floor statement by the principal sponsor of the bill Mr. PHILIP A. HART, on September 8:

Section 4G(1)(A) prohibits the use of percentage contingency fees in parens patriae cases filed under Section 4C. This prohibition is to be imposed by the court in awarding attorney's fees under subsection 4C(d)(1) and in approving dismissals and compromises under subsection 4C(c).

Section 4G(1)(B) makes explicit the prohibition of other contingency fees unless such fees are determined by the court after a litigated judgment under subsection 4C(d)(1) or, if a case is settled, by the court under subsection 4C(d)(1) and 4C(c).

The standards to be used by the court in determining a reasonable attorney's fee are as set forth in the Senate Report No. 94-803. These provisions are included to assure both the reasonableness of the fees and that the bulk of the State recovery would be distributed to consumers—not lawyers.

What the Senate bill does permit, Mr. President, is a fee—a "reasonable" fee—determined by the court. Such fee can be contingent on success, but I submit that a reasonable hourly fee contingent on success is a far cry from a percentage contingency fee of one-third or one-half of the damages awarded. A reasonable fee contingent on success, Mr. President, means that parens patriae actions can be filed which will result in plaintiff's counsel receiving nothing if the case is lost.

This very provision, Mr. President, was included in the bill, because of the strong arguments of companies like Bristol-Myers that parens patriae could be abused by the States and used to harass business through the filing of frivolous suits. I ask my colleagues to judge, Mr. President, what stronger deterrent to the filing of frivolous suits can exist than counsel's knowing if he loses he will not receive a fee?

Moreover, Mr. President, States cannot contract to pay counsel "$300 and $400 per hour." Whatever fees counsel will get under the bill will be "determined"—not merely "approved"—by the court, and they must be based primarily on a reasonable hourly fee. As Bristol-Myers well knows, the $300 and $400 per hour fees were paid in cases under circumstances which did not prohibit percentage contingency fees.

In conclusion, Mr. President, I stand by the Senate action and believe it to be highly responsible, as well as responsive to the legitimate concerns expressed by the responsible businesses which oppose the Senate bill. I rise to make this statement out of a strong conviction that the type of lobbying going on with respect to this bill, epitomized by the Bristol-Myers letter, should not and cannot be condoned by responsible legislators regardless of their views of the merit of the legislation.

EXHIBIT 1

BRISTOL-MYERS CO.,
Washington, D.C., September 7, 1976.

DEAR CONGRESSMAN: Shortly the House will vote on the final passage of H.R. 9532, the Antitrust Improvement Act.

You will recall that the House recently joined its *parens patriae* bill with its CID and premerger notification bills. The House bill prohibited contingent fees. The so-called Senate "compromise" modifies the House bill and reinstates contingent fees!

The Senate "compromise" bill permits private lawyers hired by State attorneys general (which is the usual practice) to get $300 and $400 per hour. This is unconscionable.

Furthermore, court approval is no assurance that such fees will be reasonable. In the tetracycline settlements, the courts approved in virtually every state more money for the plaintiffs' attorneys than was actually returned to consumers.

I do hope you will seek to correct this windfall to private plaintiff attorneys which may prove so tempting as to actually stir up litigation.

Very truly yours,

WILLIAM G. GREIF.

NOTE

In the RECORD of September 7, 1976, Mr. NELSON'S remarks in connection with the submission of his concurrent resolutions were incorrectly set forth in two paragraphs.

In the permanent RECORD, the second paragraph on page S15256 will be printed as follows:

Mr. President, I am here to question just how well the executive branch has conducted its examination of these plans. Merely observing the manner in which notice of these proposed sales was transmitted to the Committee on Foreign Relations raises disturbing questions. Comparing the original laundry list of proposed sales and the resultant individual notifications reveals serious discrepancies, even though both transmissions were prepared by the Department of Defense. For instance, the day after receiving the overall list of offers, the Committee on Foreign Relations was surprised to find in its box an additional arms sales notification to Israel, boosting obligations to that country by something over $72 million. That same communication brought us news that the dollar value of proposed arms sales to Saudi Arabia had mysteriously increased by $40 million in transmittal No. 7T-40 for training equipment to Saudi Arabia, there is $1 million discrepancy between the cover letter and the actual notification. Now LOD may not be disturbed by these clerical errors. After all, $1 million is a drop in the bucket for Saudi Arabia which is planning to buy $702 million worth of FMS goods and services on just this 1 day. But, Mr. President, a $1 million clerical error is at least a good indication that not everything is exactly shipshape in America's arms sales policy. Discovery of these errors should lead us to probe further.

Also, in the permanent RECORD, the third paragraph on page S15257 will be printed as follows:

Mr. President, clearly Congress must act to impose a more cautious note in our arms sales policy. The administration has demonstrated that it is incapable of so acting by sending up its Labor Day packet. The chaotic manner in which this announcement was delivered reveals a deeper chaos in this arms sales program which only a responsible Congress can now temper.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

CORRUPT OVERSEAS PAYMENTS BY U.S. BUSINESS ENTERPRISES

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of the unfinished business, S. 3664, which will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 3664) to amend the Securities Exchange Act of 1934 to require issuers of securities registered pursuant to section 12 of such Act to maintain accurate records, to prohibit certain bribes, and for other purposes.

The PRESIDING OFFICER. The pending question is on the amendment of the Senator from Idaho (Mr. CHURCH).

(Mr. CHURCH's amendment No. 2292 is printed in yesterday's RECORD at page S15792.)

The PRESIDING OFFICER. The time for debate on this amendment is limited to 1 hour to be equally divided and controlled by the Senator from Idaho (Mr. CHURCH) and the Senator from Texas (Mr. TOWER), with the vote thereon to immediately follow. Who yields time?

Mr. PROXMIRE. Mr. President, I ask unanimous consent that a quorum call be ordered without the time being taken from either side.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PROXMIRE. I ask unanimous consent that Mr. Howard Nell and Mr. Clifford Alexander of the staff of the Committee on Banking, Housing, and Urban Affairs be granted the privilege of the floor during the debate and vote on this measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TOWER. Mr. President, I ask unanimous consent that the time start running at this point.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. TOWER. I yield myself such time as I may require.

Mr. President, the amendment offered yesterday by Mr. CHURCH to S. 3664 is enormously broad and substantively intricate. It possesses implications far beyond the scope of what has been thoughtfully considered by the Banking Committee.

There has been neither hearings nor debate on this issue. The vast majority of the Members of this body have not even had an opportunity to carefully consider the proposal.

Mr. President, the Senate appears to be once again embarked on a course of legislating first and asking questions later. This is not a proper way to legislate.

Before I proceed to critically analyze the contents of this amendment I would like to emphasize its serious nature. I have just received letters from the Chairman of the Securities and Exchange Commission, Mr. Hills, and the Secretary of Commerce Mr. Richardson. They both voice strong opposition to the amendment. Mr. Richardson states as follows:

This is in response to your request for comments on an amendment proposed by Senator Church to S. 3664, Senator Proxmire's bill dealing with improper corporate payments abroad. In my capacity as Chairman of the President's Task Force on Questionable Corporate Payments Abroad, I must oppose the Church amendment for the following reasons:

Its disclosure requirements are both too broad and too narrow. They are too broad in the class of payments required to be disclosed—American corporations would have to disclose payments made for virtually all services rendered for the corporation outside the U.S., as well as payments made in connection with business with foreign governments. This sweeping disclosure, in my judgment, could create a serious paperwork burden for both American business and for the Securities and Exchange Commission, vastly disproportionate to the goals of those of us who have sought disclosure as a means to end the questionable corporate payments problem. The Church amendment's disclosure requirements are too narrow in that they apply only to SEC regulated firms, which constitute approximately one third of U.S. firms engaged in international commerce.

The treble damages provision of the Church amendment is redundant with current law—namely, section 2(c) of the Clayton Act.

The foreign policy analysis required annually by the Secretary of State is unnecessary and inappropriate. Public disclosure of such an analysis could itself have a substantial deleterious effect upon the foreign policy of this country.

The amendment's exhortation that the President make every feasible effort to obtain appropriate international agreements to end inappropriate payment practices in international commerce is unnecessary. The Administration already has underway the most vigorous possible efforts in this regard.

The Church amendment could have a sweeping effect on the conduct of international business by U.S. firms and upon this nation's foreign relations. Despite this fact, no hearings have yet been held on Senator Church's amendment in its current or previous form. It would seem unwise in the extreme, to adopt such legislation without a more deliberate exercise of legislative process.

It is my understanding that the Chairman of the SEC is forwarding a letter regarding the broad grant of discretion which would be given the SEC by this legislation. It remains my feeling, that the SEC, while playing a vital role in deterring improper corporate payments, cannot and should not bear the full burden of resolving the important public and foreign policy issues inherent in this problem.

Further, Mr. President, I wish to read into the RECORD the comments of Mr. Rod Hills, the Chairman of the Securities and Exchange Commission:

DEAR SENATOR TOWER: Thank you for providing us an opportunity to express our views on an amendment to S. 3664 which Senator Church introduced yesterday on the floor of the Senate. Although we were not provided in advance with the actual text of Senator Church's proposal, we understand that it would amend the Securities Exchange Act of 1934 to impose upon issuers of securities comprehensive recordkeeping and disclosure requirements relating to contributions, payments, gifts, commissions or things of value to commercial agents and foreign officials, as well as payments made in the context of a political contribution to a foreign government.

That such an amendment which impacts so significantly on the Commission's work should be considered at this time and in a manner inconsistent with the careful approach of the Senate Committee on Banking, Housing and Urban Affairs in its consideration of S. 3664 is a matter of gravest concern.

As you are aware, the Commission, over the past two years, has been engaged in an effective and wide ranging program to meet the problems presented by questionable and illegal corporate payments and practices both at home and abroad. To date, these efforts have resulted in the institution of over a score of enforcement actions and the voluntary disclosure of questionable or illegal practices by over 200 other companies.

Actions initiated by the Commission in its enforcement and voluntary disclosure programs have been complemented by the Auditing Standards Executive Committee of the American Institute of Certified Public Accountants' circulation of an exposure draft regarding "Illegal Acts by Clients." Similarly, at the Commission's request, the New York Stock Exchange recently sought comments from its membership on a proposed amendment to its listing policies which would require a form of outside audit committee as a condition of listing on the Exchange.

Through these initiatives a problem which, by any measure, was sufficiently widespread to be a matter of deep concern is steadily being overcome. In the long run, the lessons to be learned from this experience and the new mechanisms of corporate accountability which have resulted in the judgment of the Commission serve to strengthen the quality of corporate management, public confidence in the business community and the integrity of our Nation's capital markets.

As we advised the Senate Committee on Banking, Housing and Urban Affairs during its consideration of S. 3664, the Commission's authority to deal with the problem under its existing legislation and disclosure requirements appeared to be adequate in terms of the objectives of the federal securities laws. Nonetheless, we recognized that limited-purpose legislation in this area was desirable in order to demonstrate a clear congressional policy with respect to a controversial problem.

We also recognized, as the proposed legislation progressed through Committee sessions, a strong desire on the part of the members of the Committee to absolutely proscribe certain types of payments. As reported from the Committee, S. 3664 embodies a response to both the Commission and the Committee's principal objectives.

The amendment currently proposed by Senator Church seeks to confer upon the Commission specific authority to require more detailed disclosures of classes of corporate payments beyond those absolutely proscribed by the existing provisions of S. 3664. The Commission's record of action indicates that extensive corporate disclosures of matters of importance to investors in this area have already been made pursuant to existing requirements embodied in the Securities Exchange Act that issuers disclose to the Commission and to the public all material information concerning the activities of companies registered under the Act. Indeed, Section 13(a) of the Securities Exchange Act—which Senator Church's proposal seeks to amend to require more detailed disclosures of corporate payments abroad—already authorizes the Commission, by rule, to require the disclosure of additional information.

Accordingly, it is our view that Senator Church's proposal would significantly depart from the traditional flexibility of the federal securities laws. Although apparently conferring some discretion on the Commission, we believe the proposal would in fact deny the Commission a portion of the necessary flexibility to vary disclosure requirements which fit the precise circumstances involved in given cases. The Commission is concerned that any specific requirements with respect to disclosure of information concerning foreign payments could either prove inadequate to deal with varying circumstances and devices, or could, perhaps, prove unnecessarily over inclusive. In particular, any overall requirement that every issuer must identify the recipients of payments not already required by existing disclosure provisions or prescribed Sections 2 and 3 of S. 3664, would be of questionable benefit to investors or of but peripheral interest to them.

Since the submission on May 12, 1976 of our report to Senator Proxmire on Questionable and Illegal Corporate Payments and Practices, we have not changed our view that American business has the resolve and capacity to correct the problems we have uncovered. We believe that if Congress seeks to take an initiative in this area, new legislation should be directed toward promoting a congressional policy directed at the new and better governance of American companies and that legislation should not stifle their capacity for self correction. While the Commission is sympathetic with the underlying objectives of Senator Church's proposal, we believe that the enactment of the legislative proposals set forth in the May 12 report represents the appropriate vehicle for this expression of congressional policy. Moreover, should Congress determine that policy consideration unrelated to the objectives of the federal securities laws warrant further legislative action in this area, we would urge that such legislation be considered separately from amendments to the securities laws.

For these reasons, should the Congress deem it appropriate to enact Senator Church's proposal as part of S. 3664, the Commission would be constrained to urge that the President veto the legislation.

I believe the concerns raised by these gentlemen should not be taken lightly.

Mr. PERCY. Mr. President, will the Senator yield for a unanimous consent request?

Mr. TOWER. I yield for that purpose.

Mr. PERCY. Mr. President, I ask unanimous consent that Dr. Charles Meissner, of the staff of the Committee on Foreign Relations, have access to the floor during the debate and votes on the pending measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PERCY. Will the distinguished Senator yield for 2 or 3 minutes so I may comment on Chairman Hills' letter?

Mr. TOWER. I am delighted to yield for that purpose.

Mr. PERCY. Mr. President, may I first say that I have just seen this letter, but on first reading and after listening to the distinguished Senator from Texas, I concur with it.

I also wish to bring to the attention

of the Senate the fact, as I have commented before, that Chairman Hills has done an absolutely outstanding job in this field. He has used the authority and power as Chairman of SEC in an extraordinary measure to move into an area that has been revealed by the Church Subcommittee on Multinational Corporations of the Committee on Foreign Relations. I have the privilege of serving as the ranking Republican on this subcommittee. I am sure Senator CHURCH would feel that Chairman Hills has done an outstanding job within the scope and authority that he has.

This has been a very unpleasant task for both Senator CHURCH and myself to carry on this work for several years. But it has been absolutely essential and necessary. I think it shows the strength of our system, that we not only reveal this but also have immediate followthrough by the regulatory agency and Congress.

While I oppose the Church amendment, I fully support the Proxmire bill. I think it has been well thought through. It has had hearings. Perhaps Senator CHURCH is surprised that I would oppose his amendment. Part of it embraces and covers an amendment that Senator CHURCH sponsored and I was his principal cosponsor on the Foreign Assistance Act. This amendment I felt was sound and good as it applies to U.S. arms sales. I do not consider arms as normal commercial traffic. But the present pending Church amendment I regretfully oppose.

The broad applications of the original Church-Percy amendment in the foreign assistance bill requires a tremendous reporting burden which I simply do not feel can and should be imposed.

I think that for the second part, a private right to action which allows a competitor to sue for loss of business if a bribe or illegal payment is made, opens U.S. firms to legal harassment which does not guarantee enforcement, but will guarantee high prices to consumers as these legal costs are passed on. Most of the businessmen with whom I have been in contact think that the private right of action will bring these harassment suits, which are more cheaply settled than fought in court, resulting in much higher business cost. I know Senator CHURCH has tried to include language in this section which would moderate the number of suits, but I do feel the most important thing is that at this stage there have been no public hearings on the Church amendment as it relates to the Proxmire bill. The third section requires a report from the State Department. The State Department, it is my understanding, objects to this concept in that a report publicly sensitizes the issue.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. PERCY. Will the Senator yield me 2 additional minutes?

Mr. TOWER. I yield the Senator 2 additional minutes.

The PRESIDING OFFICER. The Senator is recognized for 2 additional minutes.

Mr. PERCY. I am loath to support the amendment because of the lack of hearings. I will vote against it and if it is incorporated in the bill, I regretfully would have to oppose the bill itself. And I hope to be able to support the Proxmire bill.

I hope that we will have hearings on Senator CHURCH's concept. He has been in the forefront and is a leader in this field of trying to root out corruption. I just feel that the pending amendment goes too far and we are not sure how we can measure the consequences of it and it is too far-sweeping and wide-sweeping to have incorporated without adequate hearings on it. Certainly, it should be aired. I think the Senate should also consider suggestions that have been put forth by such industry leaders as Harvey Kapnick and Arthur Anderson and examine the new regulations of the New York Stock Exchange.

I do wish to commend Senator CHURCH for what he has accomplished and done in focusing our attention on it, and possibly by putting the amendment down he makes the Proxmire bill look a little bit milder. The Proxmire bill is a very good, tough bill as it stands. I think it will move us forward. It will be supported by the SEC.

I feel confident that the Proxmire bill will be signed by the President. But we are fairly certain, with the Chairman of the SEC saying he would recommend to the President that the whole thing would go down the drain, that is the whole bill would be vetoed, if the Church amendment is incorporated.

For these reasons, I will support the Proxmire bill, but respectfully oppose the Church amendment.

Mr. TOWER. I thank the distinguished Senator from Illinois for his comments.

We have been informed by the Department of State that they are in opposition to the Church amendment. We have no letter from them. Mr. Kissinger is a little hard to find these days. We do have an official position from the State Department that they are in opposition to the Church amendment.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. CHURCH. Mr. President, I yield myself such time as I may require.

First of all, it does not surprise me that the State Department opposes the amendment. In all the months that we have investigated the practices of multimillion-dollar bribes and payoffs all over the world, we have yet to find any evidence of State Department concern or State Department initiative taken at any time to deal with the problem. When these bribes were finally exposed, they delayed for months even taking token action.

So I really do not think the State Department wants any legislation in this field. I believe their attitude fairly could be characterized as one of indifference or perhaps benign neglect.

Mr. President, this problem is so serious and so widespread that if we are going to legislate a remedy, it must be a remedy that is commensurate with the problem. I take nothing from the efforts made by the Committee on Banking, Housing and Urban Affairs in bringing this bill to the floor of the Senate. But what does the bill do, and how can it possibly be commensurate with the problem? The bill simply makes bribes abroad illegal. I am wholly in accord with that objective, though all of us recognize the difficulty of detecting or proving bribery abroad. It is tough enough to do here at home. Then Senator PROXMIRE's bill makes certain changes in the internal accounting system of corporations. Mr. President, if this bill were really sufficient to provide a remedy for this immense amount of corruption that we have uncovered abroad in connection with the sale of arms and the sale of oil and the sale of other commodities by large companies, we could be sure that this place would be buzzing with lobbyists. They are not concerned about this bill. They have no reason to be concerned about it. That is why these corridors are not filled with the lobbyists of any companies coming here to tell us that we must not pass this bill.

This bill has the approval of the SEC, and it is a cause of no particular worry to the companies. That, I suggest, is the best proof of its inadequacy.

If we want to get to the root of this problem, we must require these companies to disclose publicly the fees and commissions they pay to their agents abroad. The Senate already has approved that principle in connection with the Arms Sales Act, so that the amendment I propose today is no new or novel departure. It simply would apply similar reporting requirements to businesses subject to the jurisdiction of the Securities and Exchange Commission.

It has been said by the distinguished Senator from Texas (Mr. TOWER), and by my colleague on the subcommittee, the distinguished Senator from Illinois (Mr. PERCY), that neither can support the amendment because it would impose too large a burden upon these big companies. They would have to furnish a vast amount of information to the Securities and Exchange Commission out of all proportion to the need.

Mr. President, I reject that argument, and I cite the language of the amendment itself, which reads in part as follows:

> . . . such information and documents (and such copies thereof) as the Commission shall deem necessary or appropriate to provide a complete accounting of any contribution, payment, gift, commission, or thing of value as defined by the Commission, not already reported pursuant to provisions of sections 22 or 38 of the Arms Export Control Act . . .

The language of the amendment clearly gives to the Securities and Exchange Commission the discretion necessary to eliminate the need to report minutiae.

What we are seeking here is a full accounting of substantial fees paid to agents in connection with their sale of-

forts abroad. Only if we require this information to be lodged with the Government and made public will it be made possible really to deal with the terrible abuses and corruption that has been uncovered by the investigation of my subcommittee during the past 2 years. This I am certain of.

I know that the reporting requirement is objectionable to these big companies precisely because it would be effective. If the law made it mandatory, subject to penalty, to list all such fees paid to foreign agents, then we can be sure that any questionable fee, where the amount was out of proportion to the services that might be accepted, would alert the Government; alert the appropriate committees of Congress, and alert the press that possible bribery was involved.

That is why they do not want this reporting requirement. Reporting is the teeth that would make this reform bill effective. Without this amendment, I think we are engaging in pure tokenism.

Mr. HARRY F. BYRD, JR. Mr. President, will the Senator yield?

Mr. CHURCH. I am happy to yield.

Mr. HARRY F. BYRD, JR. Mr. President, some months ago, the Senator from Virginia introduced legislation dealing with the question of the bribing of foreign officials.

When the tax reform legislation was before the Committee on Finance, the committee adopted the proposal which I introduced in the form of a bill. Then it was approved by the Senate and the substance of it was approved by the conferees.

The proposal which I introduced would require any payments made by a corporation to foreign officials or agents of foreign governments—it would require that corporation to report that fact to the Department of the Treasury. Then the Department of the Treasury would determine whether it was an illegal payment or a bribe.

I have not been able to be here for the entire discussion, so I may have missed some of the key points, but as I listened to the able Senator from Idaho just a few minutes ago, I thought that much of what he has discussed is embodied, as I visualize it, in the Byrd amendment, which is a part of the tax reform legislation; namely, the requirement that each company or corporation making payments to foreign officials or agents of foreign governments report that to the Secretary of the Treasury. Is that a basic part of the Senator's amendment?

Mr. CHURCH. I think that both the Senator from Virginia and the Senator from Idaho are trying to reach the same problem. The amendment that I have offered goes somewhat further than the Senator's amendment, though I certainly approve of his. My amendment calls for public disclosure of direct and indirect payments to Government officials and of all substantial fees and commissions paid to foreign agents. There will be no public disclosure where the President finds that such might seriously impair the national security interests of the United States. In most instances, though, the disclosures would be public and, thus, subject to the perusal of Congress, the various departments of the Government, and the press, and the public at large.

The second difference, I suggest—though I am not familiar with the actual wording of the Senator's amendment—is that this amendment attempts to reach the ultimate recipient. We found that, so often, where large companies were engaged in multimillion-dollar bribery, they did it through dummy corporations of various kinds, making it extremely difficult to trace the money. Unless a corporation is required to enter into arrangements to determine where the money was ultimately destined and, second, to report who ultimately got the money, the money is virtually untraceable. These dummy corporations throw up a protective screen; therefore, a reporting requirement that does not go beyond the initial recipient to the ultimate recipient is one that is not likely to be effective.

Mr. HARRY F. BYRD, JR. I think that the Byrd amendment would take care of that point. Besides a disclosure provision in the Byrd amendment, it also uses the tax laws to penalize those companies and those corporations which make illegal payments or bribes to foreign officials, so that proposal is a rather strong one.

It is stronger than President Ford has recommended insofar as his public statements are concerned. I think it should be an effective one in getting at the problem which the Senator from Idaho wishes to get at, and the Senator from Wisconsin, as well as the Senator from Virginia.

I have taken a keen interest in this question of attempted bribery of foreign officials because I think it reflects adversely on our Nation. It is a wrong way to do business.

If the American businessmen will collectively say, "We will not submit to this," they can bring about a much better business climate and cut out these bribes.

The legislation I introduced and the Senate approved and the amendment offered by the Senator from Idaho would encourage just such action on the part of various businessmen.

What concerns me about the amendment of the Senator from Idaho is whether it goes unnecessarily far, I do not say at the moment that is does, but I am concerned that it goes unnecessarily far in redtape and possible harassment of business, and would require a heavy increase in the number of Federal employees as well as drive up business costs.

In any case, the Senator from Idaho and the Senator from Virginia are trying to accomplish the same purpose.

I am persuaded to the view that the legislation already adopted by the Senate in the tax reform measure takes care, to a great degree, of the problem with which the Senator from Idaho is so deeply concerned.

Mr. CHURCH. I thank the Senator and I commend him for his work. I view this amendment as supplemental to his. I think it has a broader scope and would only reinforce what he, himself, is trying to accomplish.

Mr. PROXMIRE. Will the Senator yield?

Mr. CHURCH. I am happy to yield.

Mr. PROXMIRE. As the Senator knows, I support his amendment; I enthusiastically support the amendment. I think it is a very helpful supplement to the bill that is before us.

Also, I want to emphasize what I said yesterday, that nobody in the Congress, the House or the Senate, has done nearly as much as the Senator from Idaho has done to create the atmosphere in which we can pass legislation like this and act effectively against this problem. I think that undoubtedly, also, his action has stimulated the SEC and other agencies to act. I think he has been the leader in this area.

Let me also say to the Senator from Idaho that, although I think his amendment is a good amendment and I shall support it, I do not think it is quite right to say that the bill without his amendment is the toothless tiger which the Senator from Idaho describes. No. 1, it does make it a policy of this country that it is against the law, illegal, to pay a bribe to a foreign official. There is no question about it, we do not have it now. The bill makes it illegal. I think that is a good deterrent.

I do not know of any businessmen who want to violate the law of the United States. I think this is going to be a good deterrent.

No. 2, it leaves a far more effective paper trail. It requires that the businessmen of the country must be responsible to set up an accounting system that will inform them of what happens to their assets so that, if a bribe is paid, they will know.

It makes it a crime to create a slush fund for this purpose or to phony up their books in this way or use dummy corporations in this way. It uses the very carefully developed language of the SEC in order to achieve that.

So I think this bill is an effective means of deterring bribes. It is not as good as it could be, if we could add the amendment of the Senator from Idaho. But I think it is a very good proposal, a step in the right direction, and I hope it is not downgraded.

Mr. CHURCH. May I say to the Senator that I really had not intended to describe the bill as a toothless tiger. I would like the bill to be a saber-toothed tiger. As it comes to the Senate it has got one big saber tooth. I would like to add the other one. For everyone knows that the saber-toothed tiger, with only one saber tooth——

Mr. PROXMIRE. It is better than no tiger at all.

Mr. CHURCH. It is better than no tiger at all. But let us do it right and see that this tiger has both saber teeth, and we can do that if we pass this amendment.

Mr. PROXMIRE. In the passage of this bill, we have had assistance from a number of facets of our society interested

in corporate activity, including the accounting profession, business leaders, and most particularly, the Securities and Exchange Commission. I have already referred to the contributions of the Commission in this process. I now wish to discuss an amendment to S. 3664 that the Commission has proposed.

Sections 2 and 3 of the bill reflect the proscriptions of certain types of foreign payments. The Commission noted that because the bill contains an absolute provision against certain foreign payments, an argument might be made that the legislation reflects congressional concern for the Commission's interpretation of the "materiality" standard for determining the disclosure obligation established by other sections of the Federal securities laws. To alleviate this specific problem, the Commission suggested an express disclaimer in the legislation that the bill would not affect the ability of the Commission or private parties to induce disclosure of material facts to investors or others under other provisions of the Federal securities laws.

I think that the Commission's careful articulation of the factors to be considered in determining the obligation to disclose certain facts regarding questionable or illegal corporate payments and practices, contained in the comprehensive report submitted to my committee in May of this year, clearly indicates that it is proceeding in a thoughtful and responsive manner in this area, and I note that the general standard for "materiality" subsequently adopted by the Supreme Court in *TSC* v. *Northway*, 44 U.S.L.W. 4852 (June 14, 1976), comports with the definition advanced by the Commission as amicus curiae. As the Commission itself notes, it was not the intention of the draftsmen of S. 3664, or of my committee in approving that bill, in any way to question or diminish the work of the Commission over the years in giving content to the concept of materiality. Because I think that the bill and its legislative history are clear in this regard, I consider it unnecessary to encumber the legislation to the specific language proposed by the Commission.

Mr. TOWER. Mr. President, I yield myself such time as I may require.

I would like to note that the saber-toothed tiger is now extinct [laughter] and I cannot imagine my distinguished progressive and liberal friend from Idaho characterizing a bill that he advocates as a saber-toothed tiger. It really is Neanderthal politics. We will not get into that. I have been accused of that.

Mr. President, I would like to just reemphasize a few points. The proposal of the Senator from Idaho, it should be understood, clearly understood, is not limited to transactions between U.S. concerns and foreign governments. It would also require the reporting of legitimate payments, fees, commissions made by U.S. publicly held corporations to private foreign firms. A sweeping disclosure of this nature is totally unwarranted and without justification. As the Secretary of Commerce points out, it would place an enormous paperwork burden on American industry.

Beyond that I might note it places American businesses at a competitive disadvantage.

This is a provision for disclosure, not prohibition. The committee bill prescribes that no bribes be paid. It imposes a criminal prohibition on the payment of bribes. This bill is one that requires the disclosure of a great amount of information that, under normal circumstances, would be considered proprietary.

It could also result in the embarrassment not only of foreign governments, but private foreign firms to the extent that they would not want to trade with American firms having to operate under these disclosure provisions.

Now is no time for us to impose inhibitions on the ability of the United States to do business abroad. We have a balance-of-payments problem, and we must remain competitive in the international marketplaces.

I point out further there is also a provision in this amendment that requires foreign policy analysis and annual reporting of the disclosed transaction. This appears to me to be a serious and direct interference in the affairs of other countries, perhaps even in the domestic affairs of other countries. I do not believe it is appropriate to put the U.S. Government in the position of annually commenting on the moral fiber of another country and then giving the report wide circulation.

This provision is, in my view, extremely dangerous and it deserves very careful consideration by not only the Senate Banking Committee but by the Committee on Foreign Relations as well. In addition, I believe we should obtain detailed comment and testimony from the Department of State on the potential adverse impact it might have on the conduct of American diplomacy.

I hope the Senate will not rush into consideration of this matter now. I hope the amendment will not be adopted. I think if the amendment is adopted it will sound the death knell for what we are really trying to do, and that is to specifically proscribe bribery. This is a matter of some urgency that must be dealt with. But because as Secretary Richardson states, this amendment is too broad, and, at the same time, too narrow; it jeopardizes enactment of this legislation so that we will end up with nothing if the Church amendment is added.

I might also note that Secretary Richardson said it is too narrow and that it applies only to publicly held corporations that do only one-third of our business abroad. What about the other two-thirds? They are not even brought under the scope of the Church amendment. So, in effect, what you do is you impose an unfair competitive disadvantage on publicly held firms that may be competing abroad with privately held firms or firms that are not subject to the regulations of the Securities and Exchange Commission. It might be discriminating in favor of one American firm against another American firm.

So I hope the Senate will reject this amendment and adopt the bill that has been proposed by the distinguished chairman of the Banking Committee and myself in its present form without any debilitating amendments of this kind.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. CHURCH. Mr. President, I think we have debated this extensively. I would simply reply to the arguments of my distinguished friends from Texas by saying that, we really need not be concerned that the amendment would impose an undue burden on business.

First of all, these publicly held corporations subjected to SEC control are for the most part, very large, and they will have no great difficulty complying.

Second, they do not have to reveal a massive amount of minutia, for the amendment clearly gives the SEC the authority, the discretion, to limit the reporting requirement to substantial fees.

If we do not take this course, I just suggest to the Senator we have failed to learn what was so clearly revealed in hearings, namely, in most cases these fees are paid to intermediaries. In order to determine whether or not the money has been used to bribe foreign officials it is necessary to identify the ultimate recipients. Unless you do that then the reporting requirement is going to be rather meaningless.

This amendment, Mr. President, for the first time establishes an adequate reporting requirement. That ought to be the purpose of the legislation, and it is a requirement not unlike that which we already have approved in connection with the Arms Sales Act. I know I am repeating myself. But then I do think the argument made against the amendment on this particular ground is unfounded.

Finally, Mr. President, the argument made by my good friend John Tower that the Secretary of State would be required by this amendment to report annually to the public an analysis of this general problem does not alarm me at all. The report is to be made to the Congress of the United States and to the world. Specifically, it is to be made to the two committees having to do with foreign relations, the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives. That is where such a report ought to go.

The reason why this provision is contained in the amendment is to try to build a fire under the State Department and get it involved, get it interested, make it face up to what is going on, to the adverse impact. Indeed sometimes disastrous impact, that the widespread corrupt practices can have on the foreign policy of the United States.

So, all in all, I am persuaded, Mr. President, that this is an excellent amendment and I hope the Senate adopts it.

The PRESIDING OFFICER. Who yields time?

Mr. TOWER. Mr. President, I yield myself 1 minute.

Mr. President, the amendment states, page 4, line 4:

Each statement filed under this subsection shall be made available for examination and copying by the public, except to the extent the President determines that the disclosure of information contained in a particular statement will severely impair the conduct of the United States foreign policy, and transmits to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives a report stating that such a determination has been made and summarizing the information which is subject to the determination.

If such a determination is made, a notation to that effect shall be entered in that part of the statement which is made to the public.

I find that wording a little bit ambiguous. It occurs to me this does not proscribe the publication of this information once the President has made his determination of impairment of the conduct of foreign policy, but simply requires that a notation be made on the information that it does indeed impair American foreign policy.

I think there are other serious faults in this amendment. But I think that one alone is worth commenting upon at the moment.

Mr. HARRY F. BYRD, JR. Will the Senator yield for a question?

Mr. TOWER. I yield to the Senator from Virginia.

Mr. HARRY F. BYRD, JR. Did the committee consider, in essence, what is now the Church amendment and, if so, what was the attitude?

Mr. TOWER. The committee did consider similar legislation, but only held a brief hearing. At the hearing only members of the SEC testified on it. There was no testimony from the Departments of State or Commerce, or from private industry of any kind. Of course, the committee did not act on that legislation.

Mr. HARRY F. BYRD, JR. Did the committee members indicate by a vote as to the attitude toward that amendment?

Mr. TOWER. A similar position was rejected in committee by a rather substantial vote. I think it was 11 to 3, or something like that.

Mr. HARRY F. BYRD, JR. I thank the Senator.

Mr. MANSFIELD. Will the Senator yield?

Mr. TOWER. I yield 1 minute to the Senator from Montana.

ITEMS PLACED UNDER "SUBJECTS ON THE TABLE"

Mr. MANSFIELD. Mr. President, this has been cleared on the other side.

Mr. President, I ask unanimous consent that the following pieces of legislation be taken out from general orders under rule VIII and transferred to subjects on the table: Calendar No. 707, S. 1624; Calendar No. 751, Senate Resolution 68; Calendar No. 779, S. 2837; Calendar No. 970, S. 2715; Calendar No. 989, H.R. 10138; Calendar No. 1063, S. 3737.

I believe that is it for the moment.

Mr. ALLEN. Reserving the right to object, would the distinguished majority leader give a little more explanation on just what is being done?

Mr. MANSFIELD. Yes. The first one, Calendar No. 707, a bill to promote the free flow of commerce among the several States, and for other purposes.

Mr. ALLEN. I am familiar with that bill. I would like to object, if the distinguished majority leader does not object to my interposing an objection.

Mr. MANSFIELD. Does the Senator wish to object to this request?

Mr. ALLEN. As to this particular one. Is this putting the bill in the position where it can be called up more easily?

Mr. MANSFIELD. No. It goes back under subjects on the table.

Mr. ALLEN. I see.

Then it would take a motion to get them off the table?

Mr. MANSFIELD. A motion to call them up, as it would under general orders.

Mr. ALLEN. I withdraw my objection.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

[Later the following ocurred:]

Mr. MANSFIELD. Mr. President, I ask unanimous consent that Calendar No. 1092, Senate Resolution 495, be taken off General Orders and be placed under Subjects on the Table.

The PRESIDING OFFICER. Without objection, it is so ordered.

CORRUPT OVERSEAS PAYMENTS BY U.S. BUSINESS ENTERPRISES

The Senate continued with the consideration of the bill (S. 3664) to amend the Securities Exchange Act of 1934 to require issuers of securities registered pursuant to section 12 of such act to maintain accurate records, to prohibit certain bribes, and for other purposes.

Mr. TOWER. Mr. President, I yield 3 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. PERCY. Mr. President, I have just seen the letter from Elliot Richardson, Secretary of Commerce, and again I find myself in agreement.

First, he makes the statement that American corporations would have to disclose payments made for virtually all services rendered for the corporation outside the United States. This seems a very incongruous situation, when the Congress of the United States creates paperwork at the very time we have a Commission actively working to try to correct unnecessary governmental burdens. All of this has to be passed on to the consumer. To require a corporation such as Caterpillar—that virtually does all its business through agents abroad—to report and file paperwork, to require them to go through all these procedures, serves no earthly good whatever.

In my own experience in 110 or 112 countries in which I did business, in only five we do business directly. All the others were through agents. I certify on a Bible and in blood that at no time in 25 years of business experience did our company ever have to pay 1 single cent to anyone to get business. We did have agents. We felt it in the best interest of the country to have people who were nationals abroad engage in business as partners with us and sell products abroad.

I have just recently had a recertification from the chief executive of the company that in all the searching they have done they never found a single party where questionable payments were involved.

Why should that company be required to file all these reports? Why then impose that load on the companies that are regulated by SEC? Even more pertinent is the statement by the Secretary of Commerce that this amendment applies only to SEC-regulated firms which constitute approximately one-third of the U.S. firms engaged in international commerce.

What about the other two-thirds then?

It is for these reasons that I feel this amendment simply does a disservice to the bill. I have a feeling that if it is tacked on this bill the Proxmire bill goes down the drain. I do not want to see that happen. I think that bill can stand on its own feet, will be supported, and I trust will be signed by the President.

Why encumber the bill with something on which we have had no hearings, to which the administration is firmly opposed, and independent regulatory agencies are firmly opposed?

Having spent 2 years now on these kind of matters in the Multinational Subcommittee, I cannot see very little that is good in this amendment. The cost and the burden involved is great, and not commensurate at all with what would be gained.

I do feel that many companies in our country have really faced up to this issue, are cleaning house from top to bottom on this issue of questionable payments. Outside boards are now getting very militant on this issue in companies. Directors are not going to serve on company boards where they feel they are not being given proper information. We have outstanding accounting firms, for instance Arthur Anderson headed by Harvey Kapnick who by the way has taken a leadership position in this field, pushing to clean up practices within the industry. We have the New York Stock Exchange now coming out with their new regulations requiring outside oversight in these matters, outside independent auditors, outside select committees to select the auditors.

I think all of these things mean we are going in the right direction.

Certainly, I say that Senator CHURCH has done a noble job in getting this whole trend going. I just tend to think it is a question of overkill now.

Let us let these other forces move. Let us let the criminal penalties be involved. This is a very tough thing that auditors are now asking for. It is a criminal offense under the Proxmire bill if a company misleads their own auditors.

We have gone so far. We are on the verge of really legislating action. Let us act responsively and responsibly. Let us not just do something for the sake of

doing it and have it vetoed because of sound principles which I fully support.

The PRESIDING OFFICER. Who yields time?

The Senator from Idaho has 6 minutes.

Mr. CHURCH. Mr. President, I ask unanimous consent retroactively that Mr. Ira Nordlicht, who has been sitting next to me throughout this debate, be granted privilege of the floor to sit beside me throughout the debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHURCH. Mr. President, I would be remiss if I did not say to the distinguished Senator from Illinois how much I appreciate the support he has given me as the ranking Republican member of the Subcommittee on Multinational Corporations.

The course of this entire investigation has not been easy for any of us on that committee. It has not been easy to disclose practices that have been of great embarrassment to American companies and that have caused very great controversy, very great difficulties, and political crises abroad.

And yet it was a job which had to be done if we are going to root out and eliminate these corrupt practices in the future.

I just want him to know how much I appreciate the support he has given me through many, many months.

I would close the debate, Mr. President, by saying once more that I really cannot find the argument that this amendment would be overly burdensome a very persuasive one, because the language of the amendment subjects the scope of the reporting requirement to the discretion of the commission in order to eliminate any unnecessary reporting that would not be relevant.

I simply cannot accept that argument as a persuasive one. But I do know, based upon our hearings, that unless we have a reporting requirement that covers all fees and commissions that are paid to foreign agents, we will not have an effective means for dealing with this problem. It is not that most of these fees and commissions are not perfectly legal, perfectly proper, and pay for services rendered. But unless all of the fees and commissions are reportable, it will not be possible to find those that are suspect because of their size. Unless the reporting requirements obligate the corporation to identify the ultimate recipient, then dummy corporations will continue to be used as shields to conceal these practices.

For these two reasons, the amendment really is indispensable, in my judgment, to a truly effective bill designed to adequately correct the serious problem of corruption in our business practices abroad.

The PRESIDING OFFICER (Mr. MORGAN). Who yields time?

Mr. TOWER. Mr. President, I am prepared to yield back the remainder of my time if the Senator from Idaho is prepared to yield back the remainder of his time.

Mr. CHURCH. I yield back the remainder of my time.

Mr. PERCY. Mr. President, I move to table the amendment.

The PRESIDING OFFICER. The motion is not in order.

Under the previous order of the Senate, there is to be a vote on this amendment after the time for debate has expired. Therefore, the motion is not in order. The yeas and nays have been ordered. All time has been yielded back. The clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from New Hampshire (Mr. DURKIN), the Senator from Michigan (Mr. PHILIP A. HART), the Senator from Indiana (Mr. HARTKE), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Wyoming (Mr. MCGEE), the Senator from Minnesota (Mr. MONDALE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Utah (Mr. MOSS), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that if present and voting, the Senator from Minnesota (Mr. HUMPHREY) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Maryland (Mr. BEALL), the Senator from Tennessee (Mr. BROCK) and the Senator from New York (Mr. BUCKLEY) are necessarily absent.

The result was announced—yeas 29, nays 58, as follows:

[Rollcall Vote No. 592 Leg.]

YEAS—39

Bayh	Hatfield	Metcalf
Burdick	Hollings	Muskie
Byrd, Robert C.	Huddleston	Nelson
Church	Inouye	Pearson
Clark	Jackson	Proxmire
Culver	Leahy	Ribicoff
Eagleton	Magnuson	Symington
Gravel	Mansfield	Talmadge
Hart, Gary	Matthias	Weicker
Haskell	McGovern	

NAYS—58

Allen	Ford	Pastore
Baker	Garn	Pell
Bartlett	Glenn	Percy
Bellmon	Goldwater	Randolph
Bentsen	Griffin	Roth
Biden	Hansen	Schweiker
Brooke	Hathaway	Scott, Hugh
Bumpers	Helms	Scott,
Byrd,	Hruska	William L.
Harry F., Jr.	Javits	Sparkman
Cannon	Johnston	Stafford
Case	Kennedy	Stennis
Chiles	Laxalt	Stevens
Cranston	Long	Stevenson
Curtis	McClellan	Stone
Dole	McClure	Taft
Domenici	McIntyre	Thurmond
Eastland	Morgan	Tower
Fannin	Nunn	Williams
Fong	Packwood	Young

NOT VOTING—13

Abourezk	Hart, Philip A.	Montoya
Beall	Hartke	Moss
Brock	Humphrey	Tunney
Buckley	McGee	
Durkin	Mondale	

So Mr. CHURCH's amendment (No. 2292) was rejected.

Mr. TOWER. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. PROXMIRE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WILLIAMS. Mr. President, the revelations during the last year and a half of foreign bribes by scores of U.S. companies is a most unfortunate chapter in the history of American business. We are all aware that the "bribery scandals" have done great damage to this country's relations with foreign nations. The companies who paid the bribes, and those companies' stockholders have also suffered.

The problems and the harm are well documented in the hearing records of the Banking Committee and the Subcommittee on Multinational Corporations. No one expected at the beginning of these hearings that corruption of such magnitude and at such high levels would be documented. No one expected that such disregard for good ethics and good business practices existed in the conduct of American overseas business.

In the past 12 months, persons in every walk of life, including many in the administration, have expressed indignation about the bribery problem. But moral exhortation alone is not enough. The antibribery legislation which is before us today rejects the confused, pious position of the administration that would leave the door wide open for more corrupt payments in the future. It meets the abuses uncovered in a direct and unequivocal manner. S. 3664 announces to the world that we do care about the conduct of our citizens and corporations in foreign countries.

Corporate bribery has been shown to be widespread and multinational in nature. Bribes seem to have become a total way of life for some of the companies and people involved.

But S. 3664 channels this country's efforts at those problems that have had the greatest adverse impact on our own policies and citizens. It only reaches our own companies and citizens. And it makes illegal those bribes that corrupt foreign public officials and that erode the integrity of the disclosure system of the Federal securities laws. In so doing the bill avoids those delicate foreign policy and jurisdictional concerns that could have arisen if we were to interfere with the laws of foreign countries.

Rather than create foreign policy problems, this bill will solve them. Rather than raise concerns in the minds of our friends abroad, this bill will alleviate them. S. 3664 is clearly the best solution to the problem, and I am pleased to support it.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendments to be proposed, the question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. TOWER. May we have order, please?

The PRESIDING OFFICER. Will the Senate please be in order?

Mr. PROXMIRE. Mr. President, I intend to make a unanimous-consent request in connection with the final passage of this bill, and I wish to explain why.

I think the Senate is going to approve this bill by a big margin. The Committee

on Banking, Housing and Urban Affairs approved it unanimously. It is a bill that we clearly need.

I think every Member of the Senate is aware of the very pernicious effect on our country and American business of bribery overseas. This is a good, strong bill. However, this bill may not go anywhere unless we can attach it to a bill which has passed the House of Representatives. If we pass it in its present form it will go over to the House of Representatives, and they will have to get a rule, have hearings, and it will be delayed.

It is now September 15. We hope and expect to be out of here in 2 weeks.

For that reason, Mr. President, I wish to attach this bill to a bill which has passed the House of Representatives and has been polled out by the Committee on Banking, Housing and Urban Affairs. It is a bill which simply provides for the extension of time on two studies by the Securities and Exchange Commission. It is a bill which is noncontroversial but a bill that has passed the House of Representatives.

If I can attach this bill, on which we are about to act in the Senate, to the bill that has passed the House of Representatives, it will mean we can go directly to conference with the conference committee representatives in the House of Representatives and have an excellent chance of enacting this into law by passing the House of Representatives and the Senate and having the President sign it.

So I hope Senators will agree to what I am about to propose.

UNANIMOUS-CONSENT REQUEST

Mr. President, I ask unanimous consent that the Committee on Banking, Housing and Urban Affairs be discharged from further consideration of H.R. 12346 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Wisconsin?

Mr. TOWER. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. PROXMIRE. Mr. President, may I ask my good friend from Texas to reconsider that objection? He also favors this bill. He said so. I know he does. I think he can understand that if we do not take this procedure we are going to have great difficulty enacting this bill into law.

Mr. TOWER. I do not necessarily agree with my distinguished colleague from Wisconsin that the House of Representatives will be slovenly in such an important matter as this. I am sure they are as concerned about the proscription on bribery as we are. I am hopeful that they will carefully consider this measure before the end of the session.

Therefore, Mr. President, I reiterate my objection.

Mr. PROXMIRE. May I just ask the Senator to reconsider that? I agree the House of Representatives is not going to be slovenly. But it is one thing to be laggard and something else to recognize that, with only a few days remaining and with the problem of getting this bill through a committee in the House of Representatives, through the Rules Committee in the House of Representatives, and then acted on by the House of Representatives, it is unlikely. If we are really sincere about acting on bribery, a bill which I think is going to be overwhelmingly approved by the Senate, I do hope he will reconsider that objection.

Mr. TOWER. I think it is important to test the sincerity of the House of Representatives. I have reconsidered my objection of the consent request propounded by my distinguished friend from Wisconsin, and I still object.

The PRESIDING OFFICER. Objection is heard.

Mr. PROXMIRE. Mr. President, I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Shall the bill pass? The yeas and nays have been ordered. The clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from New Hampshire (Mr. DURKIN), the Senator from Michigan (Mr. PHILIP A. HART), the Senator from Indiana (Mr. HARTKE), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Wyoming (Mr. MCGEE), the Senator from Minnesota (Mr. MONDALE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Utah (Mr. MOSS), the Senator from Mississippi (Mr. STENNIS), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Maryland (Mr. BEALL), and the Senator from New York (Mr. BUCKLEY) are necessarily absent.

The result was announced—yeas 86, nays 0, as follows:

[Rollcall Vote No. 593 Leg.]

YEAS—86

Allen	Goldwater	Nelson
Bartlett	Gravel	Nunn
Bayh	Griffin	Packwood
Belmon	Hansen	Pastore
Bentsen	Hart, Gary	Pearson
Biden	Hatfield	Pell
Brock	Hatfield	Percy
Brooke	Hathaway	Proxmire
Bumpers	Helms	Randolph
Burdick	Hollings	Ribicoff
Byrd, Harry F., Jr.	Huddleston	Roth
Byrd, Robert C.	Inouye	Schweiker
Cannon	Jackson	Scott, Hugh
Case	Javits	Scott, William L.
Chiles	Johnston	Sparkman
Church	Kennedy	Stafford
Clark	Laxalt	Stevens
Clausen	Leahy	Stevenson
Culver	Long	Stone
Curtis	Magnuson	Symington
Dole	Mansfield	Taft
Domenici	Mathias	Talmadge
Eagleton	McClellan	Thurmond
Eastland	McClure	Tower
Fannin	McGovern	Weicker
Fong	McIntyre	Williams
Ford	Metcalf	Young
Garn	Morgan	
Glenn	Muskie	

NAYS—0

NOT VOTING—14

Abourezk	Hart, Philip A.	Montoya
Baker	Hartke	Moss
Beall	Humphrey	Stennis
Buckley	McGee	Tunney
Durkin	Mondale	

So the bill (H.R. 3664) was passed, as follows:

H.R. 3664

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 13(b) of the Securities Exchange Act (15 U.S.C. 78m(b)) is amended by inserting "(1)" after "(b)" and by adding at the end thereof the following:

"(2) Every issuer which has a class of securities registered pursuant to section 12 of this title and every issuer which is required to file reports pursuant to section 15(d) of this title shall—

"(A) make and keep books, records, and accounts, which accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and

"(B) devise and maintain an adequate system of internal accounting controls sufficient to provide reasonable assurances that—

"(i) transactions are executed in accordance with management's general or specific authorization;

"(ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements and (2) to maintain accountability for assets;

"(iii) access to assets is permitted only in accordance with management's authorization; and

"(iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

"(3) It shall be unlawful for any person, directly or indirectly, to falsify, or cause to be falsified, any book, record, account, or document made or required to be made for any accounting purpose, of any issuer which has a class of securities registered pursuant to section 12 of this title or which is required to file reports pursuant to section 15(d) of this title.

"(4) It shall be unlawful for any person directly or indirectly—

"(A) to make or cause to be made, a materially false or misleading statement, or

"(B) to omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in the light of the circumstances under which they were made, not misleading to an accountant in connection with any examination or audit of an issuer which has a class of securities registered pursuant to section 12 of this title or which is required to file reports pursuant to section 15(d) of this title or in connection with any examination or audit of an issuer with respect to an offering registered or to be registered under the Securities Act of 1933."

SEC. 2. The Securities Exchange Act of 1934 is amended by inserting after section 30 the following new section:

"PAYMENTS TO OFFICIALS

"SEC. 30A. It shall be unlawful for any issuer which has a class of securities registered pursuant to section 12 of this title or which is required to file reports pursuant to section 15(d) of this title to make use of the mails or of any means or instrumentality of interstate commerce corruptly to offer, pay or promise to pay, or authorize the payment of, any money, or to offer, give or promise to give, or authorize the giving of, anything of value to—

"(1) any person who is an official of a for-

eign government or instrumentality thereof for the purpose of inducing that individual—

"(A) to use his influence with a foreign government or instrumentality, or

"(B) to fail to perform his official functions, to assist such issuer in obtaining or retaining business for or with, or directing business to, any person or influencing legislation or regulations of that government or instrumentality;

"(2) any foreign political party or official thereof or any candidate for foreign political office for the purpose of inducing that party, official, or candidate—

"(A) to use its or his influence with a foreign government or instrumentality thereof, or

"(B) to fail to perform its or his official functions,

to assist such issuer in obtaining or retaining business for or with, or directing business to, any person or influencing legislation or regulations of that government or instrumentality; or

"(3) any person, while knowing or having reason to know that all or a portion of such money or thing of value will be offered, given, or promised directly or indirectly to any individual who is an official of a foreign government or instrumentality thereof, or to any foreign political party or official thereof or any candidate for foreign political office, for the purpose of inducing that individual official, or party—

"(A) to use his or its influence with a foreign government or instrumentality, or

"(B) to fail to perform his or its official functions,

to assist such issuer in obtaining or retaining business for or with, or directing business to, any person or influencing legislation or regulations of that government or instrumentality.".

PAYMENTS TO OFFICIALS

SEC. 3. (a) It shall be unlawful for any domestic concern, other than an issuer which is subject to section 30A of the Securities Exchange Act of 1934, to make use of the mails or of any means or instrumentality of interstate commerce corruptly to offer, pay or promise to pay, or authorize the payment of, any money, or to offer, give, or promise to give or authorize the giving of, anything of value to—

(1) any individual who is an official of a foreign government or instrumentality thereof for the purpose of inducing that individual—

(A) to use his influence with a foreign government or instrumentality, or

(B) to fail to perform his official functions,

to assist such concern in obtaining or retaining business for or with, or directing business to, any person or influencing legislation or regulations of that government or instrumentality.

(2) any foreign political party or official thereof or any candidate for foreign political office for the purpose of inducing that party, official, or candidate—

(A) to use its or his influence with a foreign government or instrumentality thereof, or

(B) to fail to perform its or his official functions,

to assist such concern in obtaining or retaining business for or with, or directing business to, any person or influencing legislation or regulations of that government or instrumentality; or

(3) any individual, while knowing or having reason to know that all or a portion of such money or thing of value will be offered, given, or promised directly or indirectly to any individual who is an official of a foreign government or instrumentality thereof, or to any foreign political party or official thereof or any candidate for foreign political office, for the purpose of inducing that individual, official or party—

(A) to use his or its influence with a foreign government or instrumentality, or

(B) to fail to perform his or its official functions,

to assist such concern in obtaining or retaining business for or with, directing business to, any person or influencing legislation or regulations of that government or instrumentality.

(b) Any person who willfully violates this section shall upon conviction be fined not more than $10,000, or imprisoned not more than two years, or both.

(c) As used in this section—

(1) the term "domestic concern" means an individual who is a citizen or national of the United States, or any corporation, partnership, association, joint-stock company, business trust, or unincorporated organization which is owned or controlled by individuals who are citizens or nationals of the United States, which has its principal place of business in the United States, or which is organized under the laws of a State of the United States or any territory, possession, or commonwealth of the United States; and

(2) the term "interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place or ship outside thereof, and such term includes the intrastate use of a telephone or other interstate means of communication or any other interstate instrumentality.

Mr. PROXMIRE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. TOWER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CHANGE OF VOTE—H.R. 14260

Mr. RANDOLPH. Mr. President, I ask unanimous consent that my vote on H.R. 14260 on Friday, September 10, 1976, be changed from "yea" to "nay" and that the permanent RECORD reflect my negative vote.

The PRESIDING OFFICER (Mr. McGOVERN). Without objection, it is so ordered.

Mr. TOWER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. McGOVERN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. HATHAWAY). Without objection, it is so ordered.

FARMER-TO-CONSUMER DIRECT MARKETING ACT—CONFERENCE REPORT

Mr. McGOVERN. Mr. President, I submit a report of the committee of conference on H.R. 10339 and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. HATHAWAY). The report will be stated by title.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 10339) to encourage the direct marketing of agricultural commodities from farmers to consumers, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the RECORD of September 13, 1976, beginning at page H9988.)

Mr. McGOVERN. Mr. President, this conference report is signed by all of the conferees and has been cleared on both sides of the aisle.

H.R. 10339 is directed toward the encouragement of the direct marketing of agricultural commodities from farmers to consumers.

SUMMARY OF MAJOR PROVISIONS OF H.R. 10339 AS AGREED TO BY THE CONFERENCE COMMITTEE

The bill, as agreed to by the conferees—

First, requires the Secretary of Agriculture to carry out a program to facilitate the direct marketing of food commodities from farmers to consumers, for their mutual benefit, under which there would be a nationwide survey of existing direct marketing operations; an allocation of funds to the State departments of agriculture and the Extension Service of the USDA, to provide assistance for direct marketing within the respective States; and an annual report by the Secretary on activities carried out under the act to further direct marketing;

Second, defines "direct marketing from farmers to consumers" to mean the marketing of agricultural commodities at any marketplace established for the purpose of enabling farmers to sell their agricultural commodities directly to individual consumers in a manner calculated to lower the cost and increase the quality while providing increased financial returns for farmers;

Third, authorizes the appropriation of funds in the amount of $1.5 million for each of the fiscal years 1977 and 1978; and

Fourth, directs the payment of 80 percent of the cost of transporting hay—not to exceed $50 per ton—from areas in which hay is in plentiful supply to the affected emergency areas under the emergency hay program.

DIRECT MARKETING PROGRAM

A program of direct marketing contains the promise of substantial economic benefits to the Nation. The program will aid smaller farmers, whose farms are interspersed with urban concentrations throughout the more populated areas of the country, to stay in business. The program will make it possible for more consumers to purchase fresh, field-ripened produce, often at lower prices than are otherwise available. Although the bill places primary reliance upon private individuals and groups to take initiatives toward new methods of direct marketing,

on an economically self-sustaining basis, it encourages flexibility and innovation in those instances where direct marketing appears to be feasible and beneficial. Furthermore, the successful operation of a direct food marketing facility within a town or city can have beneficial side effects, among which is attracting people into the downtown shopping district and thus stimulating retail trade.

HAY TRANSPORTATION ASSISTANCE

The drought in the northern plains States, especially my home State of South Dakota and the States of Minnesota, and Wisconsin, has confronted farmers in this area with an extremely serious situation. These farmers have had to live with this situation for the past 3 years.

Under the present hay transportation assistance program being conducted under section 305 of the Disaster Relief Act, the Government is providing up to two-thirds of the actual cost to transport hay—not to exceed $27 per ton—to drought-affected areas in Minnesota, North Dakota, South Dakota, and Wisconsin. The committe of conference agreed to a provision requiring the Secretary of Agriculture to pay 80 percent of the cost of transporting hay—not to exceed $50 per ton—from areas in which hay is in plentiful supply to disaster or emergency areas where farmers or ranchers are located. Except for the increase in the transportation assistance, the new section of the bill does not affect the existing program.

This compromise by the conferees will hopefully alleviate some of the burden on farmers in the drought-stricken areas. The provision does not go as far as the original amendment to the direct marketing bill pased by the Senate, but it is a step in the right direction. It is a provision that we should adopt.

Mr. BELLMON. Mr. President, I wish to inform my colleagues regarding the budget implications of the emergency hay program which has been changed substantially in the conference on this bill. Senators will recall that the formula for this disaster relief program which was in the Senate-passed version had previously been estimated by the CBO at a cost of approximately $53 million. As a conferee and as one who has previously been involved in Government-sponsored emergency relief for farmers, I was very concerned by the nature of the previous formula since it appeared to be open ended and might have cost substantially more than the CBO estimate. I believe the new formula which raised the transportation subsidy for hay from two-thirds of the total transportation cost to 80 percent with a maximum of $50 per ton is a better approach to this program.

I wish to insert into the RECORD the new cost estimates of this changed approach and I am pleased that the new cost estimates are substantially below our previous levels.

The USDA has estimated the cost of the increase from two-thirds to 80 percent to be about $5.6 million. The CBO, using slightly different assumptions, has costed the increase at $15.8 million. I suspect that the true cost is somewhere in between.

The important point is that the second concurrent resolution of the congressional budget which was passed earlier this afternoon does contain room for this program.

I ask unanimous consent that the attached estimates from the CBO and the USDA be printed in the RECORD.

There being no objection, the tables were ordered to be printed in the RECORD as follows:

TABLE 1.—COST OF HAY TRANSPORTATION ASSISTANCE, FISCAL YEAR 1977

[In thousands]

State	Number of animals as of July 1, 1976	Requirements: Number after liquidation	Requirements: Number needing hay	Number to receive hay	Tonnage required	Cost—$1 per ton subsidy
Dairy cows:					(2 /head)	
Minnesota	870	870.0	43.50	43,500	130,500	$522,000
South Dakota	155	155.0	7.75	7,750	23,250	93,000
Wisconsin	1,810	1,810.0	90.50	90,500	271,500	1,086,000
Total	2,835	2,835.0	141.75	141,750	425,250	1,701,000
Replacement heifers:					(1.5 /head)	
Minnesota	387	387.0	19.35	19,350	29,025	116,100
South Dakota	45	45.0	2.25	2,250	3,375	13,500
Wisconsin	713	713.0	35.65	35,650	53,475	213,900
Total	1,145	1,145.0	57.25	57,250	85,875	343,500
Beef cattle:					(2.8 /head)	
Minnesota	3,044	2,739.6	684.90	650,650	1,111,170	4,444,680
South Dakota	4,750	2,375.0	1,187.50	1,068,750	1,893,750	7,575,000
Wisconsin	2,077	2,077.0	207.70	197,315	395,167	1,580,668
Total	9,871	7,191.6	2,080.10	1,916,715	3,450,087	13,800,348
All cattle:						
Minnesota	4,301	3,996.6	747.75	713,500	1,330,695	5,322,780
South Dakota	4,950	2,575.0	1,197.50	1,078,750	1,950,375	7,801,500
Wisconsin	4,600	4,600.0	333.85	317,465	680,142	2,720,568
Total	13,851	11,171.6	2,279.10	2,115,715	3,961,212	15,844,848

[1] Rounded upward to reflect the greater dependence on hay in South Dakota

USDA ESTIMATE—EMERGENCY HAY PROGRAM AS OF AUG. 25 1976

	Average payment per ton	Ton shipments times average payment per ton	Projected to June 15 1977	Less (5 percent) for hay on hand dropouts etc.
Minnesota	9.20	$11,563,480	$8,317,000	$6,237,750
South Dakota	16.17	4,150,020	20,350,130	15,412,590
Wisconsin	15.14	1,703,370	8,516,885	6,387,663
North Dakota	9.00	11,565	57,825	43,371
Total payment:				
At 66⅔ percent				$28,061,374
At 80 percent				33,673,649
Added cost				5,612,275